IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 398 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEMON SATTAR HABIBBHAI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MIG MANSURI for Applicant(s) : 1,
MR KC SHAH APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 12/12/2007

ORAL JUDGMENT

1. Petitioner – convict has preferred this Criminal Revision Application u/s 397 read with Section 401 of the Code of Criminal

Procedure, 1973 and challenged the judgment and order of conviction passed by learned J.M.F.C., at Botad on 30-9-1988 in Criminal Case No.602 of 1987 and confirmed by learned Additional Sessions Judge, Bhavnagar in Criminal Appeal No. 57 of 1988.

2. On the basis of the complaint filed by Hasmukhbhai Lallubhai before Botad Police Station offence was registered as I – CR No.65 of 1987 for offence punishable u/ss 454, 457, 380 and 114 of the I.P. Code. and investigation was started. During the course of investigation, panchnama of recovery of muddamal and panchnama of scene of offence were drawn. The petitioner and other accused were arrested and arrest panchnama was drawn. On completion of investigation charge sheet came to be filed before learned J.M.F.C., Botad for the aforesaid offences. The trial court framed charge Exh. 3 for offence punishable u/ss 454, 457, 380 and 114 of the I.P. Code against the petitioner and other accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge. On completion of

recording of evidence, incriminating circumstances appearing against the accused in the evidence were explained to them. The accused in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973, denied having committed the offence and stated that they are innocent and false case is foisted against them. After hearing learned A.P.P. and learned advocate for the accused, the trial Court convicted the petitioner and accused Jayanti Arjan Bhangi for the aforesaid offences and sentenced them to undergo various terms of imprisonment and acquitted other accused. Being aggrieved by the said decision, the petitioner preferred Criminal Appeal No. 57 of 1988 before Sessions Court, Bhavnagar. Learned Addl. Sessions Judge, Bhavnagar by his judgment dated 21-9-1993 dismissed the appeal and confirmed the judgment and order of conviction and sentence passed by the trial court. Therefore, the petitioner has preferred present Criminal Revision Application.

3. I have heard learned advocate Mr. M.I.G. Mansuri for the petitioner and learned A.P.P.

Mr.K.C. Shah for the respondent – State. I have also perused record and proceedings of the case.

4. Learned advocate Mr. Mansuri for the petitioner submitted that there is no direct evidence connecting the petitioner with the offence and conviction is based solely on circumstantial evidence. Panchnama of recovery of muddamal is not duly proved and the Investigating Officer has not been examined and the courts below have committed serious error in convicting the petitioner. Therefore the impugned judgments of the courts below are required to be set aside.

5. Learned A.P.P. Mr. Shah submitted that there are concurrent findings of the courts. Therefore, the High Court should be slow in exercising revisional powers. He also submitted that the evidence clearly indicates involvement of the petitioner in the offence and independent witness to whom muddamal was sold has identified the petitioner and therefore learned trial court as well as lower appellate court were justified in passing the impugned judgment and no

interference is warranted in the impugned judgments.

6. It appears that the case hinges upon circumstantial evidence only. In view of settled proposition, while exercising revisional powers the High Court should be slow in reappreciating the evidence. In the decision of **Jagannath Choudhary & Ors. V. Ramayan Singh & Anr.**, reported in **2002 (3) G.L.R 2243**, the Hon'ble Apex Court held that **"the revisional power is to be exercised only in exceptional situations where there is flagrant miscarriage of justice on account of manifest illegality or glaring defect in procedural aspects."** The Court also held that **"the Court has to consider whether substantial justice has been done."** In the decision of **Vimalsingh V. Khuman Singh and Another**, reported in **AIR 1998 SC 3380**, the Hon'ble Apex Court has laid down principles with regard to interference in the order of the trial Court.

7. It appears from the evidence of the complainant P.W. 1 Hasmukhbhai Lallubhai Exh. 10 that about 10 – 12 days before 13-4-1987

theft was committed in his godown and wooden articles were stolen. The evidence of the witness also indicates that he did not lodge any complaint with regard to theft but when the police informed him about recovery of stolen wooden articles he went to the police station and found co-accused Jayanti Arjan Bhangi and Lalji Kanji Koli sitting in the police station. Thereafter, complaint Exh. 11 came to be filed. It appears that though theft was committed in his godown the complainant did not lodge complaint but after about 10–12 days as the police informed the complainant about recovery of wooden articles the complaint was lodged but no one was named in the complaint. The evidence of this witness does not implicate the petitioner in the offence.

8. The prosecution produced complaint at Exh. 11. It was filed on 13-4-1987. It indicates that muddamal articles allegedly recovered from the petitioner were shown to him and thereafter the complaint came to be filed.

9. On conjoint reading of evidence of P.W.1

and complaint Exh. 11, it appears that the complaint was filed on 13-4-1987 for the offence allegedly taken place before about 10-12 days. There is no explanation with regard to delay in filing of the complaint. Therefore, the petitioner cannot be implicated in the offence on the basis of such evidence.

10. The prosecution examined panch P.W. 2 Ooresh Amulakhbhai at Exh. 14 and P.W. 3 Bhupatbhai Damodardas at Exh. 16 to prove panchnama of recovery of muddamal articles Exh. 15. The evidence of P.W. 2 indicates that he was called at the police station on 12-4-1987 and his signature was obtained but he did not read the writing. It also indicates that the complainant was the uncle of the witness and he signed only because police asked him to sign. The evidence of P.W. 3 indicates that he was called at the godown on 12-4-1987 as police had arrested two persons with wooden articles and panchnama in respect of recovery of muddamal was drawn. It also indicates that his shop is adjoining to the complainant's shop. The panchnama was drawn between 20-00 and 23-00 hours on 12-4-1987 and

the witness signed it on the next day at the police station. It appears from this evidence that both the panchas signed the panchnama at different time and at different places. Therefore, there are glaring discrepancies in the prosecution case with regard to panchnama. It is significant that alleged panchnama was drawn on 12-4-1987. But the offence came to be lodged on 13-4-1987. The report under Section 154 of the Code of Criminal Procedure, 1973 produced at Exh. 11 does not indicate as to when offence was registered. Therefore, evidence of panch witnesses and panchnama Exh. 15 do not inspire confidence.

11. The prosecution examined P.W. 6 Gunvantbhai Lavjibhai at Exh. 27 to prove panchnama Exh. 37. It appears from the evidence of this witness, that the petitioner and co-accused Jayanti allegedly showed willingness to discover muddamal articles. Panchnama Exh. 37 is a joint discovery and it does not indicate the exact words used by the accused to discover muddamal articles. It is also significant that the Investigating Officer is not examined. Therefore,

panchnama Exh. 37 does not inspire confidence and could not be relied upon to connect the petitioner with the offence.

12. The prosecution examined P.W. 8 Nanubhai Ranabhai at Exh. 30. According to the witness, he was in need of wood and he had talk with the petitioner in that regard and the petitioner and co-accused Jayanti supplied the muddamal articles. In view of the fact that the panchnama and discovery panchnamas have not been duly proved, the oral testimony of the witness with regard to the muddamal articles cannot be believed.

13. In view of above, there are glaring discrepancies in the prosecution case and even circumstantial evidence is not beyond suspicion. Therefore, the courts below committed serious error in convicting and sentencing the petitioner for the offence charged against him. Therefore, judgment and order of conviction and sentence passed by the trial Court and confirmed by the lower appellate court are perverse and erroneous and are required to be set aside.

14. In the result, this criminal revision application succeeds and the judgment and order of conviction passed by learned J.M.F.C., Botad on 30-9-1988 in Criminal Case No. 602 of 1987 and confirmed by learned Addl. Sessions Judge, Bhavnagar on 21-9-1993 in Criminal Appeal No. 57 of 1988 are set aside. The petitioner is acquitted for the offence charged against him. The petitioner is on bail, his bail bonds stand cancelled. Rule is made absolute.

(Bankim N. Mehta, J.)

/JVSatwara/